

MAY 03 2001

TECH CENTER 1600/2900

Atty. Ref.: **2801-18**

Group: **1632**

Examiner: Dhruva

* * * * *

05/01/2001 SHIRASAKI 00000034 095557G 210.00 UP

ALTERNATE RULE 181 PETITION

The attached Response should be construed as a Request for Reconsideration, as required Rule 181, in the event the Examiner refuses to withdraw the restriction requirement, as requested in the attached Response. As described in the attached, the Examiner's refusal to withdraw the restriction requirement, as requested in the attached, will, presumably, make the restriction requirement final and the attached should, in such a case, be considered a Request for Reconsideration. This will allow consideration of the present Petition prior to the Examiner's issuance of a substantive Action. The present Alternate Petition is being submitted therefore to advance prosecution and consideration of the issues contained in the attached and discussed below.

The following is a statement of facts, as required by Rule 181(b) and point or points to be reviewed and the action requested.

The Examiner has required an election of one of allegedly eight patentably distinct Groups of claims. The Examiner has indicated however that the subject matter of Groups III, VII and VIII are each defined by subject matter of Class 514, subclass 44. Similarly, the subject matter of Groups IV, V and VI are contained Class 514, subclass 2. Accordingly, a search of Groups III, VII and VIII would be the same. Similarly, a search of the subject matter of Groups IV, V and VI, would be the same. The Examiner has admitted therefore that the subject matter of Groups III, VII and VIII and the subject matter of Groups IV, V and VI has not attained separate status as requiring separate inventive effort or requiring a separate search, as might indicate separately patentable subject matter. See, MPEP §808.02. Accordingly, at a minimum, the restriction requirement should be withdrawn or a new Office Action should be issued indicating any separately patentable subject matter and allowing the applicants an opportunity to elect subject matter for further prosecution.

More importantly, the Commissioner is urged to appreciate, that the present application is a 371 application of PCT/IT98/00364, and that the European Patent Office has indicated the requirement of unity of invention in accordance with Rules 13.1, 13.2, and 13.3 is complied with. See, International Preliminary Examination Report, which the Notification of Acceptance dated June 23, 2000, indicates has been received by the Patent Office. The Examiner in the present case has not only failed to indicate how the present 371 application lacks unity of invention, but the present Examiner has also

failed to indicate how the prior Examiner during the international stage was incorrect in finding the present application complied with the requirements of unity of invention. Accordingly, withdrawal of the restriction requirement of March 26, 2001, or issuance of a further Office Action containing a new restriction requirement are requested.

The restriction requirement should be withdrawn.

As the Examiner has failed to withdrawn the restriction requirement, which is the only reason the present Alternate Petition is being considered, the Commissioner is requested to have the restriction requirement withdrawn and proceed with examination of all of the claimed subject matter. Alternatively, the Commissioner is requested to have the Examiner issue a new Office Action containing a proper justification for any restriction requirement which continues to be required, in a new non-substantive Office Action.


As the present Alternate Petition is only being considered in the event the Examiner has erred in not withdrawing the restriction requirement as requested in the attached Response, a petition fee is not believed to be required for consideration of the present Alternate Petition. The Commissioner is authorized however by the undersigned's attached cover sheet to charge any required fee for consideration of the present Alternate Petition, should the Office deem otherwise. Grant of the present Petition and examination on the merits of the claimed subject matter are requested, in the event the Examiner refuses to withdraw the restriction requirement and examine all the claimed subject matter, as requested in the attached Response.

BOTTAZZI t al.
Serial N . 09/555,473

The Office is requested to contact the undersigned if anything further is required in this regard.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
B. J. Sadoff
Reg. No. 36,663

BJS:eaw
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100